

House Bill 1549

By: Representatives Manning of the 32nd and Watson of the 91st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to provide for the prequalification and licensing of individuals and
3 companies to conduct or design hazardous site investigations, site assessments, feasibility
4 studies, remedial programs, and corrective action plans and to carry out cleanup of hazardous
5 sites; to define such persons as licensed environmental professionals and provide for their
6 qualifications, licensure, and regulation; to define terms; to state findings and intent; to
7 provide for a licensing and regulatory board and its membership, powers, duties, and
8 operations; to provide for related functions and operations of the Department of Natural
9 Resources and its Environmental Protection Division; to provide for related matters; to
10 provide an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
14 is amended by adding after Chapter 17 a new Chapter 17A to read as follows:

15 "CHAPTER 17A

16 43-17A-1.

17 (a) As used in this chapter, the term:

18 (1) 'All appropriate inquiry' means the standard requirements and procedures for
19 conducting investigations and inquiries into the previous ownership, uses, and
20 environmental conditions of a property for the purpose of qualifying for certain
21 landowner liability protections under state and federal environmental laws. The Final
22 EPA Rule on all appropriate inquiry will be effective on November 1, 2006. Until
23 November 1, 2006, the requirements of the interim standards for all appropriate inquiries

1 established in the Small Business Liability Relief and Brownfields Revitalization Act (the
2 Brownfields Amendments to CERCLA) satisfy the statutory requirements for all
3 appropriate inquiries. The interim standard is the ASTM E1527-00 Phase I
4 Environmental Site Assessment Process. Parties also may use the newly revised ASTM
5 standard, ASTM E1527-05 standard.

6 (2) 'Board' means the Board of the Department of Natural Resources.

7 (3) 'Business organization' means any corporation, limited liability company, partnership,
8 limited partnership, or other legal entity.

9 (4) 'Compliance status report' means a report on conditions at a hazardous site according
10 to standards and requirements set out in Section 391-3-19-.06(3) of the Georgia
11 Administrative Code.

12 (5) 'Comprehensive response action' means the three phased undertakings and activities
13 required to stabilize and clean up a hazardous site which are:

14 (A) The Phase I site investigation, site inspection, and site assessment activities;

15 (B) The Phase II feasibility study, remedial design, and corrective action plan
16 activities; and

17 (C) The Phase III remedial action activities where the actual construction and
18 implementation of site cleanup occurs.

19 (6) 'Corrective action plan' means a plan developed and certified by a licensed
20 environmental professional describing and detailing actions that must be taken to ensure
21 that a site where a release of a regulated substance has occurred is cleaned up to specified
22 risk reduction and remediation standards and other site specific criteria necessary to
23 protect human health and the environment from potential exposure to hazardous
24 substances.

25 (7) 'Director' means the individual appointed by the board to head the division.

26 (8) 'Division' means the Environmental Protection Division of the Department of Natural
27 Resources created pursuant to subsection (a) of Code Section 12-2-1.

28 (9) 'Environmental regulation' means a rule or regulation promulgated by the board
29 prescribing the ways and means by which the division enforces and implements federal
30 or state environmental laws.

31 (10) 'Feasibility study' means the development, screening, and detailed evaluation of
32 alternative remedial actions.

33 (11) 'Federal environmental law' means the following acts of Congress, as now or
34 hereafter amended, including:

1 (A) The Comprehensive Environmental Response, Compensation and Liability Act
2 ('CERCLA') as set out in 42 U.S.C.S. Sections 9601-9675, as now or hereafter
3 amended;

4 (B) The Resource Conservation and Recovery Act ('RCRA') as set out in 42 U.S.C.S.
5 Section 12-13-1, et seq., as now or hereafter amended; and

6 (C) The Toxic Substances Control Act ('TSCA') as set out in 15 U.S.C.S. Section 2681,
7 et seq., as now or hereafter amended.

8 (12) 'Licensed environmental professional' means an individual or business organization
9 licensed in accordance with the provisions of this chapter.

10 (13) 'Licensing board' means the State Board of Certification, Registration, and
11 Licensing of Licensed Environmental Professionals established pursuant to subsection
12 (a) of Code Section 43-17A-4 and which is a professional licensing board in accordance
13 with the provisions of Code Section 43-1-1.

14 (14) 'Orphan site' means a site that is designated a hazardous site under the provisions
15 of state environmental law or federal environmental law for which no potentially
16 responsible party can be identified, qualified, and compelled to pay for and implement
17 a comprehensive response action.

18 (15) 'Potentially responsible party' ('PRP') means any person who may be liable under
19 Section 107 of CERCLA for a release or threatened release of hazardous substances or
20 pollutants or contaminants.

21 (16) 'Qualifying agent' means an individual who is a licensed environmental professional
22 pursuant to paragraph (2) of Code Section 43-17A-5 and Code Section 43-17A-6 and
23 whose affiliation with a business organization qualifies such organization for licensing
24 as a licensed environmental professional pursuant to Code Section 43-17A-7.

25 (17) 'Remedial action' means the actions and undertakings that follow the remedial
26 design phase and involves the actual construction or implementation of site cleanup.

27 (18) 'Remedial design' means the phase in a site cleanup where the technical
28 specifications for cleanup remedies and technologies are designed.

29 (19) 'Remedial investigation' means the collecting of data at a site to characterize site
30 conditions and determine the nature and extent of contamination; to assess risks to human
31 health and the environment in the site environs; and to conduct treatability testing to
32 evaluate the potential performance and cost of cleanup treatment technologies that are
33 being considered.

34 (20) 'Site specific accounting' means the requirements imposed by Code Section
35 43-17A-10 relating to recording expenditures from the Hazardous Waste Trust Fund to
36 finance state managed comprehensive response actions at orphan sites.

(21) 'State environmental law' means any of the following Acts of the General Assembly, as now or hereafter amended:

- (A) The 'Georgia Hazardous Waste Management Act,' Code Section 12-8-60, et seq.;
- (B) The 'Georgia Hazardous Site Response Act,' Code Section 12-8-90, et seq.;
- (C) The 'Georgia Hazardous Site Reuse and Redevelopment Act,' Code Section 12-8-200, et seq.;
- (D) The 'Georgia Underground Storage Tank Act,' Code Section 12-13-1, et seq.; and
- (E) Any Act of the General Assembly empowering and directing the board to comply with federal statutes relating to protection of the environment.

43-17A-2.

(a) The General Assembly has found:

(1) That the Environmental Protection Division's ability to effectively and efficiently enforce and implement state and federal environmental laws and regulations relating to state managed comprehensive response actions at orphan sites is adversely impacted by the lack of full-time, in-house, technical staff that are, from time to time, needed to review, analyze, and manage a comprehensive response action and to investigate, review, and certify compliance therewith;

(2) That the costs of the division's maintaining, in-house, a full capacity technical review and response capability full time and year round is prohibitively expensive in the context of the need for funding of other equally deserving programs and needs; and

(3) That because of the number of hazardous sites in the state and the need to initiate and complete remediation of such sites in a timely manner and the demonstrated willingness of the General Assembly to fund comprehensive response actions at such sites, there has grown up in the private sector a sizable complement of environmental response and remediation consultants and contractors with sufficient technical expertise, experience, and ability, in house, full time, to supplement the division's technical staff capabilities on an as-needed basis.

(b) The General Assembly intends:

(1) That the provisions of this chapter shall be liberally construed and implemented to empower, authorize, and encourage the director to reduce or, at a minimum, stabilize division overhead expenses by augmenting the division's hazardous response and corrective action capabilities by purchasing, from time to time and as needed, the technical abilities, expertise, and practical experience of prequalified private sector licensed environmental professionals;

1 (2) That, on and after July 1, 2006, budget requests by the director for funding additional
2 technical staff positions be justified in light of the director's authorization and ability,
3 under and pursuant to this chapter, to locate and purchase technical expertise and
4 services, as needed, from a prequalified private sector complement of licensed
5 environmental professionals; and

6 (3) That a site specific system of accounting for moneys expended by the division from
7 the Hazardous Waste Trust Fund for state managed comprehensive response actions at
8 orphan sites is necessary to enable the General Assembly to better understand the costs
9 associated with such response actions.

10 43-17A-3.

11 (a) No person, business organization, or association shall contract for or undertake to
12 perform in this state any of the elements or components of a comprehensive response
13 action, or perform work or provide services in this state to effect compliance with any
14 other requirements of state or federal environmental law unless such person, business
15 organization, or association has a license issued by the licensing board pursuant to the
16 provisions of this chapter.

17 (b) The licensing board, by and through the division, is authorized and directed to establish
18 criteria and procedures for the certification of competency and licensing of licensed
19 environmental professionals which criteria and procedures shall be substantially as set out
20 in Code Sections 43-17A-6 and 43-17A-7.

21 (c) The division shall maintain a registry of all individuals and entities licensed by the
22 licensing board as licensed environmental professionals. Such registry shall be designated
23 the 'Registry of Licensed Environmental Professionals' and shall list, by name, address, and
24 registry number, all licensees and indicate where an individual licensee is registered and
25 acting as the qualifying agent for a licensed business organization. The information
26 required to be included and maintained in the registry of licensed environmental
27 professionals shall be listed in all contracts and agreements between the division and
28 licensed environmental professionals for services or work on any element of a
29 comprehensive response action or related activity.

30 43-17A-4.

31 (a) There shall be established a State Board of Certification, Registration, and Licensing
32 of Licensed Environmental Professionals. The licensing board shall consist of nine
33 members as follows:

(1) The director of the Environmental Protection Division of the Department of Natural Resources who shall serve as the chairperson of the board;

(2) The chiefs of the division's Hazardous Waste, Land Protection, and Brownfields Revitalization programs;

(3) The chairperson of the Georgia Institute of Technology's School of Civil and Environmental Engineering or his or her designee;

(4) The dean of the University of Georgia's College of Agricultural and Environmental Sciences or his or her designee; and

(5) Three private sector members, appointed by the Governor, who shall have significant experience and expertise in the areas of environmental protection or natural resources preservation.

(b) The director shall employ such staff and other persons as are required to assist the board in the performance of its functions and duties. The costs so incurred shall be paid from the Hazardous Waste Trust Fund.

(c) Members of the licensing board shall not be compensated for their services but shall be reimbursed expenses incurred incidental to such service in the same amounts and manner as provided in Code Section 45-7-3, et seq., applicable to members of the General Assembly.

43-17A-5.

An individual seeking to be licensed as a licensed environmental professional in this state shall file an application on a form provided by the licensing board, accompanied by an application fee in the amount of \$5,000.00. Such an application may be submitted by either:

(1) An individual seeking issuance of a license in his or her own name for purposes of engaging in the profession in his or her own name or doing business as an individual in a trade name as a sole proprietorship; or

(2) An individual affiliated by ownership or employment with and acting as a qualifying agent for a business organization or association seeking to be licensed as a licensed environmental professional in accordance with and pursuant to Code Sections 43-17A-6 and 43-17A-7.

43-17A-6.

(a) An individual shall be eligible to apply and be examined for licensing as a licensed environmental professional if such person is:

(1) Licensed as a professional engineer by the State Board of Registration for Professional Engineers and Land Surveyors;

1 (2) Licensed as a professional geologist by the State Board of Registration for
2 Professional Geologists;

3 (3) Has a baccalaureate degree or higher in science or engineering and ten years of
4 relevant full-time work experience in the field;

5 (4) Has ten years of relevant experience working full time in a capacity specializing in
6 hazardous sites assessments, compliance status reports, and design and implementation
7 of remedial and corrective action plans; or

8 (5) Has other proven experience deemed substantially similar by the licensing board.

9 (b) An individual who applies and is otherwise qualified for licensing pursuant to
10 subsection (a) of this Code section shall take and pass a competency examination, designed
11 and compiled by the division and approved by the licensing board, to evidence his or her
12 knowledge of federal and state environmental law and the regulations promulgated
13 thereunder and the scientific disciplines involved in the enforcement and implementation
14 of such laws and regulations.

15 (c) An individual who meets the requirements set out in subsection (a) of this Code section
16 and who has passed the competency examination required by subsection (b) of this Code
17 section shall be licensed by the licensing board to provide services and engage in business
18 as a licensed environmental professional; provided, however, that if the applicant applied
19 for licensing as a qualifying agent for a business organization pursuant to paragraph (2) of
20 Code Section 43-17A-5, he or she shall, as an additional condition precedent to licensing,
21 file with the licensing board the name and address of the business organizations with which
22 he or she is then affiliated as a qualifying agent.

23 (d) A licensee, on his or her own behalf, or, where acting as a qualifying agent on behalf
24 of a business organization, shall notify the licensing board, in writing, within 30 days of
25 any change in the information required to be on file with the division, including, but not
26 limited to, the licensee's status as a qualifying agent for any business organization.

27 (e) Any otherwise qualified applicant failing the examination required in subsection (b)
28 of this Code section may be reexamined at any regularly scheduled examination within one
29 year of the date of his or her original application upon payment of a reexamination fee in
30 an amount to be set by the licensing board without need to resubmit an application, unless
31 any information set forth in the previously submitted application is no longer accurate or
32 complete. Any person requesting to take the examination a third or subsequent time shall
33 wait at least one calendar year after the taking of the last examination and shall resubmit
34 a full application with the appropriate examination fees.

35 (f) The licensing board shall require, as a condition precedent to issuance or renewal of a
36 license under this Code section, that individuals and business organizations licensed as

1 licensed environmental professionals pursuant to the provisions of this chapter obtain, and
2 maintain in force, professional liability insurance in such amounts and under coverages and
3 provisions as the licensing board may reasonably require.

4 (g) All licenses issued pursuant to this chapter shall be renewed biannually on the
5 anniversary date of their issue, or, if such anniversary date falls on a Saturday or Sunday,
6 on the first business day next following such anniversary date. Licenses may be renewed
7 within 30 days of their expiration date by mailing written application for renewal and
8 paying a late renewal fee as determined by the licensing board. All licenses not so renewed
9 shall be invalid and the license holder shall no longer be qualified to perform services as
10 a licensed environmental professional or an environmental contractor.

11 (h) As a condition of renewal, the licensing board may require licensees to complete
12 division approved continuing education of not more than six hours annually.

13 43-17A-7.

14 (a) A business organization wishing to qualify for licensing as a licensed environmental
15 professional shall file an application on a form provided by the licensing board specifying
16 the name of any persons in its full-time employ who are licensed as licensed environmental
17 professionals pursuant to Code Section 43-17A-6 and who have agreed to act as the
18 business organization's qualifying agent for certification. Such application shall be
19 verified by all licensed environmental professionals named therein as qualifying agents.
20 The business organization shall pay an application fee in the amount of \$10,000.00.

21 (b) Such application shall specify and affirm that the qualifying agent or agents named
22 therein shall be employed in a supervisory capacity by the business organization applicant
23 on all projects wherein it is involved as a licensed environmental professional.

24 (c) Unless otherwise disqualified for licensing pursuant to subsection (c) of Code Section
25 43-17A-9, a business organization filing such a verified application and paying the
26 application fee provided in subsection (a) of this Code section shall be licensed by the
27 division as a licensed environmental professional.

28 (d) The division shall maintain a registry of business organizations licensed as licensed
29 environmental professionals and the names of their qualifying agents.

30 (e) A business organization licensed as a licensed environmental professional pursuant to
31 an application listing a particular qualifying agent or agents may continue to engage in
32 business as a licensed environmental professional under such license only so long as the
33 license of at least one of the named qualifying agents is valid and such agent remains as a
34 full-time employee of such licensee; provided, however, that the licensee shall:

(1) Promptly notify the division, in writing, of separation or death of any such qualifying agent or agents; and

(2) Within 120 days of the date of death or separation of such original qualifying agent or agents, file a written notice with the division confirming the licensee's hiring of a licensed replacement for such agent or agents.

(f) No portion of the moneys collected and appropriated for deposit into the Hazardous Waste Trust Fund or collected and appropriated for deposit into the Underground Storage Tank Trust Fund shall be paid, directly or indirectly, to any person or business organization that is not licensed as a licensed environmental professional pursuant to this chapter.

43-17A-8.

(a) Any licensed environmental professional who has:

(1) Conducted a site investigation or produced a site assessment; or

(2) Produced a remedial design or compiled a corrective action plan for a particular orphan site

shall not thereafter be eligible to contract with, or be paid by, the division for implementation of such remedial design or corrective action plan for the same orphan site, it being the intent of the General Assembly to eliminate the occurrence, appearance, or possibility for conflicts of interest relating to such projects.

(b) The limitations imposed by subsection (a) of this Code section are remedial in nature and intended to prevent conflicts of interest and shall be liberally construed to effectuate such purpose.

43-17A-9.

(a) Individuals and business organizations licensed as licensed environmental professionals pursuant to this chapter shall be authorized by the state to undertake activities and make decisions affecting the health and safety of the public and the protection of the environment; and, accordingly, such individuals and business organizations shall, in the performance of such activities and the making of such decisions, be held to the highest standards of professional and ethical conduct and care.

(b) The director shall investigate any credible claims or charges that a licensed environmental professional has engaged in fraud, deceit, or other illegal undertaking; and he or she shall also investigate and sanction license holders for gross negligence, repeated or persistent incompetence, or intentional misconduct in the performance of any activity or undertaking covered by this chapter. Any sanction imposed upon an individual who is a qualifying agent for a business organization shall be deemed to be imposed also in the

1 name of, and against, such business organization. Such charges, unless dismissed without
2 hearing by the director as unfounded, shall be heard and determined by the division in
3 accordance with the provisions of Chapter 13 of Title 50, the 'Georgia Administrative
4 Procedure Act.'

5 (c) In addition to the authorities and obligations conferred upon the director by the
6 provisions of subsection (b) of this Code section, the director shall have the power to
7 reprimand any licensed environmental professional or to suspend, revoke, or refuse to
8 grant, renew, or restore a license to any person or licensee if the director finds that such
9 person or licensee has engaged in any fraud or deceit in obtaining a license or otherwise
10 engaged in gross negligence, repeated or persistent incompetent actions or intentional
11 misconduct in the practice of his or her profession, or willful violation of any provisions
12 of this chapter.

13 (d) For purposes of this Code section, a person or business organization operating on an
14 expired, revoked, lapsed, or suspended license shall be considered unlicensed.

15 (e) The director may issue a cease and desist order relating to all unlicensed activities
16 falling within the division's jurisdiction or scope of enforcement authority under this
17 chapter or any other state or federal environmental law. Upon finding probable cause to
18 believe that any work, undertaking, or activity requiring a license under this chapter is
19 being performed by a person or business organization without such a current, valid license,
20 the director may also seek to enforce such order by injunctive relief or other related actions
21 within the power and authority of the division.

22
23 43-17A-10.

24 (a) The General Assembly has created the Hazardous Waste Trust Fund and has regularly
25 appropriated moneys to the fund that, in accordance with subsection (b) of Code Section
26 12-8-91, is the primary source of financing state managed comprehensive response actions
27 at orphan sites. In order that the General Assembly and other involved state agencies and
28 departments have the ability to access the efficiency and effectiveness of such programs
29 and expenditures and to understand and anticipate future needs for funding, the director's
30 authority to expend such moneys shall, as of July 1, 2006, be limited and accounted for as
31 required in subsections (b) and (c) of this Code section.

32 (b) The moneys deposited in the Hazardous Waste Trust Fund shall be expended by the
33 director only as follows:

- 34 (1) For emergency actions the director considers necessary to protect public health,
35 safety, or the environment whenever there is a release of hazardous wastes, hazardous
36 constituents, or hazardous substances;

(2) For payments to licensed environmental professionals under contracts with the division to perform any of the tasks comprising a comprehensive response action at orphan sites; and

(3) For payments, loans, and grants under and pursuant to the provisions of the 'Georgia Brownfields Rescue, Redevelopment, Community Revitalization, and Environmental Justice Act' if, as, and when such Act is enacted by the General Assembly and becomes effective according to the provisions of such Act.

(c) The director shall establish accounting practices and procedures to ensure that the moneys expended by the division on comprehensive response activities at orphan sites are recorded in site specific accounts and, within such accounts, in subaccounts identified to each element of any comprehensive response action performed at such site.

(d) The provisions of this Code section are remedial in nature and intended to allow the General Assembly to understand and measure, on a phase and site specific basis, the cost effectiveness of programs funded from the Hazardous Waste Trust Fund and the costs and efficiency of the division's management of such programs. Accordingly, the General Assembly intends that the provisions of subsection (c) of this Code section be liberally construed to effectuate such intent and purpose.

43-17A-11.

(a) The provisions of any other laws and regulations relating to and establishing procurement and contracting procedures for state boards, agencies, and departments notwithstanding, the procurement and contracting practices and procedures set out in this Code section shall be applicable to and govern contracts and arrangements between the division and licensed environmental professionals for work and services relating to state managed comprehensive response actions at orphan sites which work and services are paid for by moneys from the Hazardous Waste Trust Fund.

(b) All requests for proposals issued by the division for work and services relating to state managed cleanups at orphan sites shall:

(1) Be issued only to licensed environmental professionals and contain a requirement that all subcontractors be licensed environmental professionals;

(2) Require that bids be broken down, scheduled, and priced according to the three phases of a comprehensive response action as defined in paragraph (5) of subsection (a) of Code Section 43-17A-1, which phases encompass, respectively:

(A) The conduct of a site inspection and production of a site assessment or compliance status report;

(B) The compilation of a remedial design, conduct of a feasibility study, and development of a corrective action plan; and

(C) The implementation and construction of the remedial design and corrective action plan;

(3) Stipulate that, pursuant to Code Section 43-17A-8, a contractor that is awarded and performs Phase I work and services, Phase II work and services, or both shall not be eligible for award of a contract for performance of Phase III work and services; and

(4) Stipulate that payment to any contractor under any contract for implementing any part or all of any comprehensive response action shall not be on a lump sum basis but shall be based upon unit prices for specific quantities of work identified and performed with respect to any of the three phases of the comprehensive response action, plus any additional quantities of completed work necessitated by unanticipated site conditions.

43-17A-12.

This Act shall become effective July 1, 2006."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.